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PLEASE PASS TO MR. DAVID BECK - US ITC

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SUBJECT: World Customs Organization (WCO) Meeting of the
Thirty-Eighth (38th) Session of the Harmonized System Review
Sub-Committee (RSC).

¶1. BEGIN SUMMARY: The 38th Session of the RSC was held at the headquarters of the WCO in Brussels, Belgium, from November 15 through 26, 2008. The meeting was chaired by Ms. Raili Mdntymaa (Finland-European Community). Forty-one Contracting Parties to the Harmonized System Convention (forty countries and one customs and economic union) attended the session. In addition, 2 international organizations (FAO and ICC) were represented as observers.

¶2. All matters of significant concern to the U.S. were either resolved satisfactorily or deferred for further consideration at a future session. In particular, the RSC reached consensus on a US proposal to create a new separate heading 9619 for absorbent hygiene products. This proposal will be submitted to the next session of the Harmonized System Committee in March 2009 for provisional adoption.

¶3. Also of importance to the U.S. were pending proposals concerning biodiesel, printer cartridges, video game machines and consoles and certain multi-component integrated circuits. In addition, new proposals of interest to the United States included those concerning wood pellets, pumpkin seeds, and automated data processing systems. The U.S. supported all issues that the RSC resolved by consensus in this session.

¶4. This session was the last for the RSC to consider proposals for the 4th Review Cycle, which targets amendments for implementation on January 1, 2012. The next (5th) Review Cycle will begin in May 2009, with a view to implementing HS amendments effective January 1, 2017.
END SUMMARY.

¶5. TECHNICAL QUESTIONS:

¶A. The RSC finalized a list of HS subheadings to be deleted because of low cross-border trade in those subheadings over a given 3-year period.

¶B. The RSC continued development of a proposal by the Food and Agriculture Organization (FAO-United Nations) to provide 6-digit subheadings for numerous food products, in order to provide statistics for the FAO to monitor world food supplies, especially in developing countries. The RSC reached consensus on many particular proposals, but left a number of unsettled technical issues for finalization at the next session of the HSC (March 2009).

¶C. The RSC reached consensus on a proposal to create a new subheading 2403.11 to cover water pipe tobacco products. The RSC also reached consensus on a Subheading Explanatory Note describing the products falling in the new subheading. The HSC, at its 42nd Session (September 2008) had already provisionally adopted a proposal to define scope of the new subheading.

¶D. The RSC agreed, in principle, on a Brazilian proposal to provide separate HS provisions for "biodiesel" in HS chapters 27 and 38. The final wording of those provisions will be decided by the HSC at its next session in March 2009. The Sub-Committee agreed that biodiesel products "containing by weight 70% or more of petroleum oils or of oils obtained from bituminous materials" should fall to a newly created subheading 2710.20, while other biodiesel products would be covered by a new heading 3826. The RSC nearly reached consensus on a legal definition of the term "biodiesel" for the purposes of the new subheading and heading, but also submitted the definition text for finalization by the next session of the HSC. Of

particular importance to the US National Biodiesel Board (an industry association) was that the definition should include a reference to ASTM or similar standards to ensure that sub par biodiesel products would not be covered by the new provisions. However, several delegations opposed the inclusion of such references in the legal note defining biodiesel, because of the purported uses of biodiesel in applications other than diesel engines.

¶E. The RSC agreed to suspend consideration, during the 4th Review Cycle, of a Secretariat proposal to provide for a single heading or subheading to cover all print cartridges. The U.S. and Japan had opposed the proposal because of ongoing international litigation concerning these products. It is anticipated that this issue may be considered anew during the 5th Review Cycle, which begins in May 2009.

¶F. The RSC reached consensus on a proposal (originated by Australia) to insert a new legal note 6 to chapter 95 to define the scope of "video game machines and consoles." As a basis for its discussion, the Sub-Committee worked from a revised proposal set out in a "non-paper" submitted informally by the U.S. This revised proposal entailed a rearrangement of the structured nomenclature already provisionally adopted by the HSC. The agreed proposal will be submitted for provisional adoption by the HSC in March 2009.

¶G. The Australian Delegation withdrew its proposal to amend Note 3 to chapter 4, directing the classification of concentrated whey products. This was consistent with the U.S. position.

¶H. The Sub-Committee reached consensus on a U.S. proposal for a new heading 9619 to cover sanitary pads, diapers and other absorbent hygiene products. Given the varying composition of such products on the market, the proposal was made to combine them all in one heading in order to avoid difficulties in future classification. The Sub-Committee also agreed to consequential amendments (mainly exclusion notes) in other chapters, though the exact wording of two such notes will be forwarded to the HSC in March 2009 for finalization.

¶I. The RSC agreed to drop any consideration of amending Note 1(b) to Chapter 38. This Note has been used to examine the classification of numerous and various products on a case-by-case basis in the past, mainly to distinguish between products of chapter 21 and 38. This decision was consistent with the U.S. position.

¶J. The RSC decided that a proposal to amend the legal text of Note 8 to Chapter 85, with a view to expanding the scope of heading 8542 to include certain "multi-component integrated circuits", was not ripe for decision, as the 4th Review Cycle was nearing an end. The original proposal was made by Japan at the 36th Session of the RSC, but Japan did not follow up on it afterwards. The U.S. Semiconductor Industry Association (SIA) asked the U.S. delegation to pursue the question, which it did by organizing ad hoc informational meetings between industry representatives and delegates attending the 41st and 42nd sessions of the HSC. However, agreement on a final text among other regional and national semiconductor groups (SIA, the European Semiconductor Industry Association (ESIA) and similar trade associations in Korea, China, Taiwan and Japan) was slow in coming. Nevertheless, the U.S. formally submitted the proposed text for discussion at the 38th Session of the RSC. Given that a promised list of other headings and specific products that would be affected by the proposal was also slow in coming from the industry, the RSC was reluctant to forward the proposal to the HSC for consideration, because members wanted more time to study the question. Nevertheless, at the request of several delegates, the RSC agreed to pursue the question in the context of the 5th Review Cycle, which would begin at its next session in May 2009.

¶K. The RSC did not reach consensus on a proposal to amend Note 1(e) to Chapter 95 to clarify that sports clothing incorporating reinforcements or protective accessories, and used, e.g., in hockey, motocross, fencing, etc., were classifiable in chapter 95 as "sports equipment", rather than in section XI as wearing apparel. Given that a recent HSC classification decision on certain such products was still subject to reservation, the Sub-Committee decided not to pursue the question during the 4th

Review Cycle. It was agreed that Explanatory Note amendments could be considered by the HSC in the meantime.

¶L. Following an HSC/41 decision to classify certain a certain "correction tape" dispenser in heading 3824, the HSC requested that the RSC study a possible amendmen to Note 3(d) to chapter 38, with a view to carifying the legal basis for the HSC decision. The RSC reached consensus on this amendment and will forward it to the HSC for provisional adoption. The Sub-Committee also agreed to address proposals to amend the Explanatory Notes in this regard at a later session.

¶M. The RSC agreed that possible misalignments between the French and English versions of the HS with regard to fruit and nuts did not, in fact, exist. The Sub-Committee did agree to insert the word "nuts" in note 3 to Chapter 21 to clarify the English text.

¶N. The RSC reached consensus on a new proposal to insert a new subheading 4401.31 to cover wood pellets made by compressing wood shavings, sawdust or chips. A new Subheading Note was also agreed to define the scope of the new subheading. Two options for amending the Explanatory Notes in this regard would be sent to the HSC in March 2009 for decision.

¶O. The RSC agreed that there was no contradiction between the legal text of heading 1209 (covering seeds for sowing) and the Explanatory Note to that heading. It was agreed that this agenda item should not be pursued in the future, unless a new request was submitted by a Contracting Party.

¶P. The RSC could not reach consensus on amending subheading note 1 to Chapter 84, either by changing "lecteur" to "scanneur" in the French version, or by deleting the reference to "lecteur" in the French and "scanner" in the English. Given that not all scanners are "input units" for ADP systems, the U.S. position was to delete the reference, which was only an example, in any case. When other delegations balked at this, the U.S. proposed to compromise by replacing the term "scanner" by the expression "scanner of subheading 8471.60" in the present text. The RSC agreed to submit this agenda item to the HSC in March 2009 for final decision.

¶Q. In response to concerns raised by the Secretariat, the Sub-Committee concluded that there were no misalignments between the English and French texts of headings in chapter 91 (Clocks and watches and parts thereof). The RSC did agree to propose an amendment to the French version of the Explanatory Note to align on the English.

¶R. The RSC agreed with an EC proposal to amend the French version of subheadings 8528.41, 8528.51 and 8528.61, in order to obtain a better alignment on the corresponding English texts. Since the amendments represented an oversight in translating new amendments to the 2007 HS, the RSC agreed to ask the HSC to consider implementing these amendments on a "fast-track" basis.

¶5. OTHER ISSUES: The Secretariat prepared an information document, setting out all proposals on which the RSC had reached consensus or near consensus so far during the 4th Review Cycle. This document will serve as the basis for the Council Recommendation (to be issued in June 2009) for HS amendments to be implemented on January 1, 2012.

MURRAY